

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.6225/Del/2019

[Assessment Year : 2014-15]

Rivet Electrical Pvt.Ltd., FF-9, Vishnu Place, Near Neelam Flyover, Sec-20B, Faridabad, Haryana-121002. PAN-AAFCR8803C	vs	Pr.CIT, Faridabad, Haryana.
APPELLANT		RESPONDENT
Appellant by	Shri Rajeev Saxena, Adv., Ms. Sumangl Saxena, Adv. & Shri Sahyamsunder, Adv.	
Respondent by	Shri Anuj Garg, Sr.DR	
Date of Hearing	12.10.2022	
Date of Pronouncement	15.11.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the Assessment Year (“AY”) 2014-15 is directed against the order of Ld. Pr. CIT, Faridabad dated 29.03.2019.

2. The assessee has raised following grounds of appeal:-

1. *“That the Ld. Pr. Commissioner of Income Tax erred in law and on facts in assuming jurisdiction u/s 263 of the Act in order to substitute his subjective view in place of judicious view taken by the ld. AO on the same set of facts/evidences on record, by holding that the order passed u/s 143(3) of the Act dated 05.04.2016 was erroneous and prejudicial to the interests of revenue.*
2. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in assuming that no verification was made during the course of the assessment ignoring that during the course of the assessment, learned AO has verified the transactions by issuing*

notices u/s 133(6) of the Act and it is only when the investor companies filed their explanation alongwith documentary evidences, and no adverse material was found the credits were accepted as genuine.

3. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in failing to appreciate that once on the independent enquiry made by the ld. AO, the creditors accepted the transaction, and there was no adverse material, ld. AO was legally obliged in law to accept the transaction in view of the various judicial pronouncements of the jurisdictional and other High Courts and the Apex Court.*
4. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in observing that the ld. AO has not verified the creditworthiness of the creditors failing to appreciate that once the sums have been received through banking channels and complete evidences was provided during the course of the assessment, suspicion raised purely on assumptions is wholly unsustainable in law.*
5. *That, the Ld. Pr. Commissioner of Income Tax has erred in law as well as on facts in relying on the report of the ld. AO obtained during the course of the revision proceedings wherein instead of making independent enquiry, the ld. AO merely relied on some other cases, and hence the reliance placed on such report of the ld. AO by the ld. Pr. CIT is wholly erroneous and unsustainable in law.*
6. *That, the Pr. Commissioner of Income Tax has erred in law as well as on facts in having assumed jurisdiction u/s 263 of the Act on surmise and conjecture and passed consequential order directing the ld AO to make a fresh assessment.*
7. *That, therefore, in view of facts and circumstances of the case, the assessment order passed u/s 143(3) of the Act accepting the returned income filed by assessee being not erroneous and hence not prejudicial to the interests of revenue, the order passed u/s 263*

of the Act directing to make a fresh assessment is without any basis, bad in law and liable to be quashed.”

BRIEF FACTS OF THE CASE

3. Facts giving rise to the present appeal are that in this case, the assessee e-filed return of income declaring an income of Rs.1,27,580/- on 04.10.2014. Subsequently, the case was selected for limited scrutiny through CASS. Statutory notice dated 18.09.2015 u/s 143(2) of the Income Tax Act, 1961 (“the Act”) was issued and duly served upon the assessee fixing the date of hearing on 28.09.2015. Thereafter, notice u/s 142(1) of the Act was issued to the assessee on 09.10.2015 fixing the date of hearing on 29.10.2015. Ld. Authorized Representative of the assessee attended the proceedings. The assessment u/s 143(3) of the Act was completed vide order dated 05.04.2016. The Assessing Officer [“AO”] after providing opportunity to the assessee accepted the return of income filed by the assessee. However, the Ld. Pr.CIT noticed that the case was taken up for scrutiny to verify large share premium received during the year but the AO has not carried out the requisite inquiry and passed the assessment order, without examining and conducting the inquiry. Thus, as per Ld. Pr. CIT assessment order is erroneous and prejudicial to the interest of Revenue. He proceeded to initiate proceedings u/s 263 of the Act that ultimately culminated into passing of impugned order dated 29.03.2019 u/s 263 of the Act. Thereby, he set aside the assessment order and directed the AO to frame assessment afresh after verifying the issues.

4. Aggrieved against the order of Ld. Pr. CIT, the assessee is in appeal before this Tribunal.

5. Ld. Counsel for the assessee submitted that Ld. Pr. CIT committed gross error in holding that the assessment order is erroneous and prejudicial to the interest of Revenue. Ld. Counsel for the assessee vehemently argued that Ld. Pr. CIT was not justified in revising the assessment order. Ld. Counsel for the assessee further reiterated the submissions as made in the written submissions. The written submissions of the assessee are reproduced as under:-

1. *“That the sole issue involved in the captioned appeal filed by the assessee against the order of the Ld.PCIT u/s 263 of the Act is:*

i) Whether Ld. Pr.CIT is justified in invoking powers u/s 263 of the Act and holding that the assessment made u/s 143(3) is erroneous and prejudicial to the interest of the Revenue?

2. **Brief Facts:** *The appellant is a company which has filed the Income Tax Return for the AY 2014-15 declaring the total income of Rs. 1,27,580/- was e-filed vide no. 381433191041014 by the assessee on 4.10.2014. Copy of acknowledgement of return of income along with computation of income and Form ITR 6 has been placed at pages of PB 38-69.*

3. *During the year, to revive the business, the assessee company invited investors to invest in the business of the company. The assessee/appellant company received share premium including the Face Value of Shares of Rs. 48,70,000/- for 60,875 shares allotted at share price of Rs. 80/- including share premium of Rs. 70/- per share to the following investors:*

M/s Best Buildmart (P) Ltd., M/s Goodluck Industries Ltd., M/s Metalcity Construction Kovai (P) Ltd., M/s Radha Ballabh Nest Build (P) Ltd, M/s Texcity Constructions Kovai (P) Ltd.

4. Due to unfavourable market conditions, the assessee company could not start its business activities. During the year the company utilized its funds to earn interest income and the same was disclosed in the statement of profit and loss account and computation of income for the year.

4.1 Later, the case was selected for scrutiny to verify large share premium received during the year and to verify the applicability of section 56(2)(viib) of the Act. A notice u/s 143(2) of the IT Act dated 18.9.2015 (**PB II 184-185**) and a copy of questionnaire dated 7.8.2015 were also issued to the assessee asking to furnish documents in support of the Return of Income (**PB 177- 183**). The assessee was issued notice u/s 142(1) of the Act dated 09.10.2015 and 03.11.2015.

A copy of the notice u/s 143(2) along with the questionnaire is placed at **pages 184-185 of PB II**.

4.2 In response to the notice, the assessee filed the elaborate reply to the notice issued u/s 142(1) dated 09.10.2015. The reply of the assessee is placed at pages **PB II 188-224. (Details in submissions)**. The details of the information provided to the Ld.AO is placed at pages **PB 1-176**.

4.3 Later, to verify the details from the investor companies, the Ld.AO issued notices u/s 133(6) dated 13.01.2016 to the investor companies. Copy of notices u/s 133(6) of the Act is placed at pages **PB II 225-229**. In response, the investor companies duly filed the reply which was directly sent to the AO confirming the investment along with courier receipt which are placed at pages **PB II 230-235**.

4.4 It is submitted that after having examined the documents, replies statements of the assessee and the investor companies which were promptly provided to the Ld.AO, the assessee satisfied the conditions and established the identity and creditworthiness of the shareholders and the genuineness of the transaction.

4.5 Thus, finally the return of income was assessed and accepted at Rs. 1.27.580/- vide order dated 05.04.2016 under section 143(3) of the

Act. **(PB II 236-237)**. A notice of demand u/s 156 of the Act calculating no demand pending against the assessee dated 05.04.2016 was issued to the assessee. **(PB II 238)**. On 10.6.2016 an application u/s 154 was filed for rectifying the demand notice showing NIL as against refund of Rs. 94.400/- claimed by the 'A'. Copy of application is placed at **page 239 of the PB**.

5. The Ld.AO accepted the documents furnished at the time of assessment, and the return of income was finally assessed and accepted on the basis of documents furnished. The genuineness and creditworthiness of the above investors were verified u/s 133(6) of the Act and thereafter accepted by the Ld.AO.

6. However, later a show cause notice u/s 263 was issued by Pr. CIT to the assessee on 19.2.2019 **(PB II 240-241)** where the questions on the genuineness of the transactions and creditworthiness of the above shareholders was raised that the same were not verified by the Ld.AO. despite having satisfactorily verified the genuineness of the transaction and identity, creditworthiness of the investors by the Ld.AO during the assessment stage. The assessee also filed the response of section 263 providing details of valuation report under Rule 11UA(2)(a) **(PB II 242-244)** dated 26.2.2019. Further, a response dated 29.3.2019 was filed with Pr.CIT **(PB II 245-250)** explaining its stand that the assessee has furnished all the details satisfying the identity, creditworthiness of the investors and the genuineness of the transaction as required u/s 68 of the Act. Further, the nature and source of the share capital and the share premium received was fully explained by the assessee. With respect to section 56(2)(viib) of the Act, the assessee company issued the shares at a fair market value calculated by the assessee company as per the method enumerated under Rule 11UA of IT Rules, 1962, therefore, the provisions of section 56(2)(viib) are not applicable and the share premium should not be added back to the income of the assessee company. Thus, the burden shifts on the Department to show that even if share applicants did not have the means to make investment, the investment made by them

actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. In absence of such finding, addition can not be made u/s 68 in the hands of the assessee. However, rejecting the entire submissions of the assessee, the Ld.PCIT did not agree with the genuineness of transactions, identity and creditworthiness of the investors.

7. The main points raised by the Ld.PCIT challenging the assessment order dated 5.4.2016 are:

a) That the genuineness and creditworthiness of the investors were not verified by the Ld.AO while framing the assessment order.

b) That the genuineness of the share application money and share premium was accepted by the AO without making requisite verifications and thus it does not pass the test of genuineness.

c) That the AO completed the assessment proceedings without considering the genuineness and creditworthiness of investors.

*7. Later Pr.CIT held that the AO did not verify the genuineness, identity and creditworthiness of the shareholders during the assessment stage and held the assessment order dated 5.4.2016 to be erroneous and also prejudicial to the interest of the revenue u/s 263 of the Act. Consequently, Ld.Pr.CIT cancelled the assessment order dated 05.04.2016 and held to be framed afresh. Further, he directed the AO to hold proper enquiries to verify the issues before completing the assessment. Copy of order u/s 263 of the IT Act, 1961 is placed at pages **PB II 251-253**.*

8. Aggrieved by the order of Ld.Pr.CIT dated 29.3.2019, the Assessee/Appellant filed the appeal before the Hon'ble ITAT on 20.7.2019 by raising 7 grounds of appeal.

Submissions of the assessee:

8A. *It is submitted that the grounds of appeal involves only one issue to be decided by your goodself namely: i) whether revision order can be made by the Ld.Pr.CIT or the assessment made which has been examined*

during assessment and accepted by the AO after verifying from the investors u/s 133(6) of the IT Act and satisfactorily examining the documents during assessment proceedings as per the law.

9. The assessee co. was incorporated on 28.3.2012 having CIN U31401HR2012TC045508 engaged in the business to carry on the business of distributors, manufacturers, traders, assemblers, fabricators, repairers, importers, exporters, agents, brokers, stockists, commission agents and dealers of all kind of electrical goods, electrical wires and cables etc. Copy of certificate of incorporation as well as Memorandum of Association and Articles of Association is hereby placed at **PB I 1-22**.

10. During the year in concern the assessee/appellant company desirous of reviving the business invited the shareholders to invest. The assessee filed the RoI for AY 2014-15 at Rs. 1,27,580/- which was accepted and the assessment was framed at the returned income dated 05.04.2016.

11. Later, the return was picked up by the Pr.CIT and the order was passed u/s 263 by Pr.CIT holding that the assessment was erroneous and prejudicial to the interest of the revenue. Ld.Pr.CIT held the assessment order passed under 05.04.2016 to be cancelled and ordered it to be framed afresh.

12. It is submitted that the section 263 provides for the revision powers of orders prejudicial to revenue. For the sake of convenience, sec 263(1) is being reproduced:

(1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify,

including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

13. *It is submitted that the Section 263 of the Income-tax Act, 1961 ('the Act') provides revisional power to the Principal Commissioner ('Pr. CIT') or Commissioner ('CIT') if he is of the opinion that an order passed by the AO is erroneous and prejudicial to the interests of the revenue.*

(1) Conditions to exercise revisional jurisdiction u/s 263 and procedure to be followed in revision proceedings [(See. 263(1))]

- The Pr. CIT/CIT may call for and examine the record of any proceeding under this Act. and*
- if he considers that any order passed therein by the AO is erroneous*
- in so far as it is prejudicial to the interests of the revenue.*
- he may,*
- after giving the assessee an opportunity of being heard and*
- after making or causing to be made such inquiry as he deems necessary,*
- pass such order thereon as the circumstances of the case justify,*
- including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

14. *It is submitted that in view of above, for exercising revisional jurisdiction u/s 263 following twin conditions must be met:*

- i. Erroneous order** - The order should be erroneous. Thus, if any order is not erroneous it could not be subject to revision u/s 263. This issue is discussed below in detail along with Explanation 2 to section 263(1).*
- ii. Prejudicial to the revenue's interests** -The order should be prejudicial to the interests of the revenue. Inter-alia. in the following*

situations, an order can be said to be prejudicial to the interests of the revenue:

- *Income has been under assessed;*
- *Loss has been over assessed;*
- *Income has been assessed at a lower rate;*
- *Excess deductions, allowances and reliefs have been allowed to assessee.*

15. *In CIT v. G. R. Thangamaligai [2003] 259 ITR 129 (Mad.) (HC) it was held that in absence of any finding that there is loss of revenue, interference u/s 263 is not justified.*

16. *The powers under section 263 of the Act are to be invoked on satisfaction of twin conditions of the order being both erroneous and prejudicial to the interests of the Revenue. Where the tax effect because of an order passed by the Assessing Officer is nil, such order even if erroneous being not prejudicial to the interests of the Revenue, is not open to revision under section 263 of the Act.*

17. *In this regard, it is submitted that the Principal Commissioner of Income tax has erred in invoking the provisions of section 263 as the assessment was framed and accepted by the Ld.AO after having examined the documents furnished. The assessee had filed the relevant documents based on which the AO had not accepted but verified the same from the investors u/s 133(6) of the IT Act and thereafter framed the assessment order dated 05.04.2016. A list of documents filed before Ld.AO is tabulated as under:*

Particulars	PB page
<i>Form I Certificate of Incorporation alongwith Memorandum and Articles of Association</i>	<i>1-22</i>
<i>Auditors Report and Balance Sheet and Profit & Loss account for FY 2013-14 relevant to AY 2014-15</i>	<i>23-37</i>
<i>Acknowledgment of Return of Income along with Computation of Income and Form 6 ITR</i>	<i>38-69</i>
<i>Bank Statement from the period 01.04.2013 to 31.3.2014</i>	<i>70-71</i>

18. Moreover, the assessee had also furnished the relevant documents/details w.r.t the investors to whom the shares were issued and allotted during the year. The relevant details of the investors filed before the Ld.AO are tabulated as under:

Particulars	PB Page
M/s Best Buildmart Pvt. Ltd.	
i. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 15-16	74-85
ii. Acknowledgment of return of income along with computation of income	86-87
iii. Confirmation of accounts	88
iv. Bank statement of IDBI Bank	89-90
V. Assessment order u/s. 143(3) assessment Year: 08-09	91 -92
M/s Goodluck Industries Pvt. Ltd.	
i. auditors report and balance sheet and profit and loss account for FY 2013 - 14 relevant to assessment year 14-15	93-104
ii. Acknowledgment of return of income	105
iii. Confirmation of accounts	106
iv. Bank statement of AXIS Bank	107-108
V. Intimation U/s 143(1) of the Income Tax Act. 1961 assessment year: 2014-15	109- 114
M/s Metalcity Construction Industries Ltd.	
i. auditors report and balance sheet and profit and loss account for FY 2014 - 15 relevant to assessment year 15-16	115 - 124
ii. Acknowledgment of return of income	125
iii. Share Application Form	126
iv. Confirmation of accounts	127
V. Bank statement of IDBI Bank from 01.03.2013 to 31.03.2014	128
vi. Intimation U/s 143(1) of the Income Tax Act. 1961 for assessment year 2014-15	'129-134
M/s Radha Ballabh Nest-build Private Limited	
i. auditors report and balance sheet and profit and loss account for FY 2013-14 relevant to assessment year 14-15	135-146
ii. Acknowledgment of return of income	147
iii. Confirmation of accounts	148
iv. Bank statement of IDBI Bank from 01.04.2013 to 31.03.2014	149-150
V. Intimation u/s. 143(1) A.Y. 14-15	151 - 156
M/s Tcxcity Construction Kovai Pvt. Ltd	
i. auditors report and balance sheet and profit and loss account for FY 2014 - 15 relevant to assessment year 14-15	157-166
ii. Acknowledgment of return of income	167
iii. Confirmation of account	168

iv. Bank statement of IDBI Bank from 01.04.2013 to 31.03.2014	169-170
v. Intimation order u/s 143(1) of the income tax act	171-176

18A. Additional documents in order to prove the identity in the form of Incorporation Certificate, Memorandum of Association and Articles of the Association of the investor companies are placed at **Page PB II 254-331**.

19. In this regard, it is submitted that during the assessment proceeding assessee company has furnished all the desired documents as and when asked by Ld. Assessing officer and Ld. AO was merely satisfied with the response and documents furnished by the assessee and therefore he issued notices u/s 133(6) to the investors and after verifying the same the said assessment was accepted at the returned income of assessee after making proper investigation and enquiry in the instant case.

20. Copy of notices u/s 142(1), 143(2) of the IT Act, 1961, a copy of questionnaire issued and the copy of replies filed by the assessee before Ld.AO in response to notices along with enclosures placed at **pages 177-224 of PB II**. In response **(PB II 188)**, the assessee filed the copy of ITR acknowledgement and computation of income **(PB 38-69)** and Copy of Balance Sheet and Statement of profit and Loss account **(PB 23-37)**. Further, in response **(PB II 189)** to point no. 4,5 & 6 of the questionnaire the assessee company filed the nature of business of the company along with its registered address. **(PB 1-22)**.

21. In response to point 7 the assessee provided the details of the Directors, at point 9 the details of shareholders and their shareholding was provided as on 31.3.2013 and 31.3.2014. At point 10. the assessee provided the bank account statement maintained with the Axis Bank along with the bank book enclosed. **(PB 70-71 and 72-73)**. The assessee in response to point 12 & 13 further submitted before Ld.AO that it has not taken any unsecured/secured loans during the year. At point 16-19, the assessee submitted that it has not purchased any fixed assets during the year under assessment.

22. At point 20, the assessee submitted that it did not carry out any business activities but it earned interest income only. The net profit for the AY 2013-14 has been 7.78% while it increased to 9.28% in the AY 2014-15.

23. At point 21, the assessee has submitted the company has not engaged in trading or manufacturing activities. At point 22, the assessee has not earned any tax free income during the year. At point 23, the assessee has submitted that no receipts are covered under the provisions of section 41(1). At point 24. there are no payments made to the persons which may be covered under section 40A(2)(b).

24. At point 25-31, the assessee company has furnished details of opening/closing stock, sales, purchases, imports & exports. At point 32 & 33, details regarding the expenses have been furnished. At point 34. preliminary expenses claimed during the year under the assessment is Rs. 4.800/- claimed as per the provisions of section 35D. At point 35, no bad debts have been claimed. At point 36, no penalty or fine has been incurred by the assessee. At point 37, no payment by way of commission or brokerage has been made during the year. At point 38, details regarding the expenses on which TDS is required to be deducted has been provided. At point 39, details regarding foreign transactions have been provided. At point 40, it is submitted that the assessee has not incurred any liability under section 43B during the year. At point 41, the assessee company is not covered by the provisions of ESI & PF Act, consequently, provisions of section 2(24)(x) and 36(1) are not applicable. At point 42, no benefit has been taken in the form of duty drawback, duty of customs or central excise repaid or repayable as drawback, cash assistance u/s 28(iia)(iib)(iic). At point 43, it is submitted that the assessee has not claimed any brought forward losses and unabsorbed depreciation of earlier years. At point 44-46. various other details regarding the business of the assessee company has been furnished.

25. The information provided to the Ld.AO in response to notice issued u/s 143(2), 142(1) were substantiated and could be corroborated from the Balance Sheet and P&L furnished which are placed at **pages PB 23-37**.

26. Later, at point 14 & 15, the assessee furnished the details of loans, advances and deposits given by the assessee (**PB II 194**) amounting to Rs. 2,10,10,192/- on which the assessee has earned the interest at the rate of 12% per annum amounting to Rs. 13,74,719/-. The amount of TDS deducted by the loanees on the advances issued amount to Rs. 1,33,822/-. Copy of form 26AS was also enclosed disclosing all the interest which it has earned from the advances given, accounted in the P&L account for the year. The confirmation ledgers accounts of the persons **Lucra Automotives (P) Ltd. (Rs. 23,68,500/-)**, **Ashok Machines Tools International Ltd. (Rs. 5,16,500/-)**, **Bridgeway Equipments (P) Ltd. (Rs. 25,00,000/-)**, **Garg Tubes (Rs. 10,00,000/-)**, **Luna Chemicals Industries (Rs. 38,78,000/-)**, **Mass Impex (Rs. 5,02,000/-)**, **Mohan Singh (Rs. 20,86,795/-)**, **Mohit Industries (Rs. 27,70,000/-)**, **Rishi Maloo (Rs. 30,000/-)**, **Samridhi Realty Homes (P) Ltd. (Rs. 53,58,397/-)** (**PB II 194**) to whom the loans/advances/deposits given by the assessee are also enclosed herewith in the Paper Book (**PB II 201-210**).

27. At page **PB II 195**, the assessee provided the response with respect to share capital and premium with confirmation and other documents and justification for major expenses claimed in Statement of P&L. In response, the major expense was incurred on salaries of staff including engineer, accountant etc. The total salary amounted to Rs. 9,80,000/-. The books of accounts, bills, vouchers, statements and other relevant records were produced in the reply for verification. The bank book is enclosed and placed at **pages 196-199 of PB II**.

28. The assessee also filed the details of the largest shareholder i.e. Suparsh Promoters (P) Ltd. holding 23.80% (**PB II 23.80%**) of the shareholding consisting of 42,125 shares, Copy of acknowledgment of ITR Suparsh Nath Promoters (P) Ltd. for AY 2014-15 along with computation of

taxable income has been placed at **pages 211-212 of PB II**. At page **PB II 213- 222** is placed the auditors' report along with Balance Sheet as at 31.3.2014, statement of P&L account for the year ended March 31, 2014 along with notes to the financial statement for the year ended 31.3.2014. The assessee also filed the acknowledgement of the investment made by M/s Suparsh Promoters (P) Ltd. in the assessee company. Copy of confirmation of accounts for **K B One Infradevelopers (P) Ltd.** for the investment made in the assessee company at **page 224 of PB II**.

29. Later on, the Ld.AO in order to gather information from investors and to verify the investor, the Ld.AO further in exercise of power to call for information under section 133(6) of the Act issued notices calling for information from the investors to furnish statements of accounts and affairs dated 13.1.2016. Copy of the notices issued u/s 133(6) are placed at **pages PB 225-229**. The investor companies furnished all the documents like MoA, AoA, PAN, ITR, Confirmation of Accounts, Bank statements. Copy of the documents pertaining to the investor companies are placed at **page 74-176 of PB and 245-331 of PB II**.

30. It is submitted that in response the investors submitted the information to the Ld.AO with the acknowledgment of investment made in the shares of the assessee company. Copy of courier receipt along with a copy of acknowledgement of investment are placed at **230 to 235 of PB II**.

31. It is submitted that the information received from the investor companies were duly accepted by the Ld.AO and the genuineness of transaction, identity and creditworthiness of the investors as requirements mentioned under section 68 of the Act were accepted by the Ld.AO.

32. It is submitted that the assessee has furnished its reply to aforesaid notice u/s 143(2) dated 18.9.2015 along with its questionnaire in the most elaborate manner, to the best of its knowledge. The assessee answered all the questions of Ld.AO satisfactorily with proper documentation and evidence attached in the PB as mentioned above. The

same were discussed by the Ld.AO and were accepted to his satisfaction answering satisfactorily the requirements of section 143(2). Moreover, after getting in response to information under section 133(6) of the Act, the Ld.AO did not raise any doubts. It is only after furnishing the above mentioned documents and answering all the queries of the Ld.AO, the assessment order was framed u/s 143(3) of the Act dated 5.4.2016 at the returned income of Rs. 1,27,580/-.

33. Ld.PCIT u/s 263 based on the number of observations made revise such assessment which can not be called erroneous or prejudicial to the interest of Revenue. The following are the point wise submissions made in response to the observations made by the Ld.PCIT.

(a) That during the assessment proceedings the genuineness and creditworthiness of the above investors was not verified by the AO. That the genuineness of share application money and share premium was accepted by the AO without making requisite verifications. Further, the assessment proceedings were completed without considering the genuineness and creditworthiness of the investors.

34. It is submitted that the Ld.AO had issued notice u/s 143(2), 142(1) as mentioned above and thoroughly went through the reply of the assessee. The assessee provided the elaborated reply and attended the meetings with the AO as and when, it was required to do so. Ld.AO verified the documents and accepted them as fair and genuine. The relevant documents and evidences are placed in the PB as mentioned above. Moreover, the AO sought information from the investors u/s 133(6) which were duly and promptly responded by them. Ld.AO independently verified the information after having examined the documents furnished. Thus, it is most humbly submitted that the assertion of the Pr.CIT can not be held to be correct that genuineness and creditworthiness of the investors were not verified by the AO.

35. The Ld.PCIT issued a show cause notice u/s 263 dated 19.2.2019 **(PB II 240-241)**. The assessee's response dated 26.2.2019 is placed at **pages 242-244 of the PB II**. In its response the assessee furnished the valuation report under Rule 11UA(2), IT Rules, 1962. The amount arrived at Rs. 80/- at which the shares have been issued by the assessee to its investors. Another reply filed by the assessee is placed at **pages 245-250 of PB II**. In its reply, the assessee submitted about having established and satisfied the conditions of section 68 about the:

identity by furnishing documents such as MoA/AO. registered address, PAN, Income Tax Return, etc,

genuineness of the transaction was established from the fact that the money was received through banking channels. Other documents furnished before AO and PCIT were application form.

Creditworthiness or financial strength of the creditor/subscriber was established by furnishing the bank statement and balance sheet of the subscribers showing that it had sufficient balance or reserves and surplus to enable it to subscribe the share capital.

36. However, the reply of the assessee was rejected by the PCIT without assigning any cogent reason.

37. In its arguments on page 2 of the PCIT order u/s 263, the officer has held that the mere filing of PAN, Income Tax Return and argument that the payment has been made by the cheque are not sufficient to prove the genuineness of transaction. He held that while framing the order, AO did not look into the aspect of verifying the creditworthiness of the investor companies.

38. In this regard, it is submitted that the assessee filed all the relevant documents as and when required. Being not satisfied the AO issued notices u/s 133(6) to the investors and only after getting the response to notice u/s 133(6) of the Act. the AO found that assessee has discharged the burden as provided under section 68 of the Act. Thus, by no stretch of

imagination could it be said that the AO did not verify the creditworthiness of the investor companies.

39. It is submitted that the AO made the proper verifications based on satisfactory explanation and supporting documents before framing the assessment order. The same are being placed again in the Paper Book consisting of **PB 331 pages**.

40. Thus, the assertion of the PCIT that assessment completed is erroneous and prejudicial to the interest of the revenue as the assessment lacked the necessary enquiries is not valid and has no legal leg to stand on. The AO made proper and comprehensive enquiries and PCIT has erred in law as well as on facts in holding that there was absence of enquiry on part of AO before passing the order. There is nothing left for the assessee to furnish in order to satisfy the conditions of section 68 of the Act. It is submitted having produced the relevant documents, the assessee had satisfactorily discharged the onus cast upon him. Ld.PCIT could not discredit the documents produced by the assessee with cogent reasons and material but not in the realm of suspicion.

41. The AO, further, applied proper law and followed it both in letter and spirit to reach to the conclusion in accepting and framing the order u/s 143(3). Here also, Ld.PCIT fails to conclude that AO failed to follow the established norms and there was non-application of mind.

42. In the case law quoted by the PCIT in his order on page 2, para 4 **Shri Sabjan Saidmuhanimad V. ITO Ward-4, Alappuzah (ITAT Cochin Bench)** the PCIT is erred in holding incorrect application of law or non-application of mind to something which was obvious and required application of mind or based on insufficient materials. Neither was there insufficiency of materials nor any prejudice was caused to the interest of the revenue.

43. In last para of the page 2 of the PCIT Order, it is mentioned that section 263 empowers the commissioner to initiate suo-moto proceedings either where the AO takes a wrong decision without considering the

material available on record or he takes a decision without making an enquiry into the matters, where such enquiry was prima facie warranted. It is submitted that Ld.PCIT has erred gravely again as Ld.AO has extensive enquiry and considered all the materials available on records before framing the assessment order. There were no further enquiries to be made before accepting the claim made by the assessee in his return as asserted by the PCIT.

44. It is submitted that the AO has proactively carried out the investigations and made all the necessary enquiries in order to reach to the root of the matter based on materials collected by him. He discharged his role effectively. AO made the most comprehensive assessment u/s 143(3) of the Act and not in a summary manner u/s 143(1) as held by Ld.PCIT. It is submitted that the doubts raised by the Ld.AO were satisfactorily answered by the assessee with relevant proofs and documentary evidences.

45. Thus, it is most humbly submitted that the Ld.PCIT has gravely erred in holding and passing the order u/s 263 dated 29.3.2019 while disturbing the assessment order framed u/s 143(3) dated 5.4.2016. In doing so, PCIT has gravely erred in that the order framed by the AO was erroneous and prejudicial to the interest of the revenue.

45A. It is submitted that in a recently held decision by Hon'ble ITAT, Delhi in the matter of **Rits Jewellers (P) Ltd vs. Pr.CIT, Faridabad, Haryana** ITA No. 6226/Del/2019 dated 02.09.2022 having similar facts and circumstances allowing the appeal of the assessee ruled in the favour of the appellant. The relevant para of the judgment is reproduced here for your kind reference:

13. In the present case the Assessing Officer has made all the inquiries and after verifying the documents/ material on record passed a reasoned Assessment Order. Therefore, the Commissioner does not have any locus standi to make further inquiry. The decision of the Hon'ble Supreme Court in case of CIT vs. Max India Ltd 295 IT

282, *Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83* are aptly applicable in the present case as the Hon'ble Apex Court wherein it is held that Section 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interests of the revenue. For example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income Tax Officer is unsustainable in law. The case laws relied by the Revenue in respect of Section 263 also reiterates the said ratio as well. Some of the decisions relied by the Revenue are not at all applicable in the present case as distinguishing facts involved in those cases. Therefore, order us 263 of the Act in present appeal is not justified. Accordingly, we allow the Grounds of Appeal of the assessee and the order us 263 is passed by the Principal Commissioner of Income Tax is set aside.

46. It is submitted that in order to exercise the power u/s 263 of the Act the Ld. Principal CIT has to satisfy the twin conditions as mentioned in the section. In the case of **Malabar Industrial Co. Ltd.** case, the Supreme Court held that there must be two conditions namely that the order of assessment is erroneous **and** that the order is prejudicial to the interests of the Revenue which must be satisfied before the Commissioner may invoke his powers under Section 263 of the Act. In the instant case of assessee the Ld. AO had conducted proper enquiry of the case and all the relevant documents were placed before him during the assessment proceeding therefore it cannot be held that the assessment is erroneous.

The relevant para of the above case is cited below.

A. Malabar Industrial Co. Ltd. v. Commissioner of Income-tax, [2000] 109 Taxman 66(SC)

“6. A bare reading of this provision makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied with twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1). ”

47. Further in the catena of judgements it has been held that the **revision order passed u/s 263 of the Act is invalid if Original Assessment was completed with adequate Inquiry & Examination.** To substantiate this contention assessee is placing reliance on the following decisions of the apex court of India.

A. PCIT vs. Shree Gayatri Associates - [2019] 106 taxmann.com 31 (SC)

“2. The Commissioner, however, was of the opinion that such order of assessment was erroneous and prejudicial to the interest of Revenue. He, therefore, exercised power of revision flowing from Section 263 of the Act. Under such revision order, he held and observed that the Assessing Officer had failed to carry out proper inquiries with respect to assessee's on-money receipts. The assessee carried the issue before the Tribunal. The Tribunal, by the impugned judgment, reversed the order of the Commissioner. In such judgment, the Tribunal observed that in the order of assessment, the Assessing Officer had raised multiple queries calling upon the assessee's response. The Tribunal was of the opinion that the Assessing Officer had carried out detailed inquiries. The

Commissioner was incorrect in holding that no inquiries were carried out. The revisional powers, therefore, could not have been exercised.

3. *We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. ”*

B. *PCIT vs. Sumatichand Tolamal Gouti - [2019] 111 taxmann.com 287 (SC)*

“3. It is by now well settled that the Commissioner can exercise revisional powers under Section 263 of the Act only when it is found that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. In the present case, the Tribunal noted the observations of the Assessing Officer in the order of remand to the effect that Jain munis do not advocate spread of religion through use of computers, source of electronic media is usually shunned, very small section of the community uses computer technology for religious purposes as plenty of printed literature is available in the market. All these factors led to the market value of the CDs declining dramatically. It was on account of these reasons, that the assessee had incurred substantial loss arising out of reduction in the value of stock lying at the end of the year. The Tribunal, therefore noted that the Assessing Officer had carried out detailed enquiries and taken a plausible view.

4. *We see no reason to interfere with the view of the Tribunal. No question of law arises. The Income Tax Appeal is dismissed. ”*

48. It is submitted that in the instant case also Ld. AO had made detailed enquiries related to the case and the assessee had furnished all the desired documents as asked by him. After going through which assessment was completed at the returned income. Therefore, the revision order passed by Ld. Principal CIT u/s 263 in the instant case is invalid as the original Assessment was completed after adequate Inquiry & Examination by Ld. AO.

49. It is pertinent to note that the Explanation 2 to the section 263 elaborates on when an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue. Under clause (a) to the explanation if in the opinion of the Pr.Chief Commissioner or Chief Commissioner or Pr.CIT/CIT, the order is passed without making inquiries or verification which should have been made by the AO. Similarly, under clause (c) provides if the order has not been made in accordance with any order, direction or instruction issued by the Board section 119 of the Act.

50. In this context, it is most humbly submitted that the Ld.AO has examined, made the proper inquiries and verified the records before framing the assessment order u/s 143(3). Moreover, the order has been made in accordance with order/direction u/s 119 of the Act. Thus, as per the law provided under section 263 and explanation 2 to the section , the Ld. Pr.CIT erred in law as well as on facts in revising the assessment order passed by Ld.AO u/s 143(3) rendering the revision order u/s 263 bad in law, liable to be set aside.

51. Further, **Ld. Principal CIT has invoked provisions of section 263 of the Act, merely on the basis of surmise and conjecture which is unjustified.** The assessee in the instant case has submitted all the relevant documents of assessee company as well as of investors companies before Ld. AO and which were also placed before Ld. Principal CIT. Based on the similar set of documents Ld. Principal CIT has revised the order of Ld. AO merely on the basis of suspicion. In the following cases

it has been held that it is unjustified to invoke power under section 263 merely on the basis of conjectures, surmises, suspicion.

1) Commissioner Of Income Tax vs Anil Kumar Sharma [2010] 194 Taxman 504 (Delhi)

“5. The Tribunal after examining the facts of the case observed that although it is not discernible from the assessment order whether the Assessing Officer had applied his mind or not, but it was the prerogative of the Assessing Officer to draft his order, and if he failed to record certain findings, the assessee could not be penalized therefore. The Tribunal further observed that what has to be ascertained is whether the Assessing Officer had investigated the issue and applied his mind to the whole record. In this behalf it noted that the Assessing Officer had asked the assessee to submit the Purchase Deed in respect of the purchase of land at village Tughlakabad and that the assessee in response thereto had supplied requisite details and submitted a copy of the High Court's decision in relation to the award of compensation etc. **The Tribunal, therefore, came to the conclusion that the complete details were filed before the Assessing Officer and that he applied his mind to the relevant material and facts, although such application of mind is not discernible from the assessment order. The Tribunal held that, the Commissioner in proceedings under Section 263 also had all these details and material available before it, but had not been able to point out defects conclusively in the said material, for arriving at a conclusion that particular income had escaped assessment on account of non-application of mind by the Assessing Officer. The Tribunal, therefore, allowed the appeal of the assessee and quashed the order of the Commissioner passed under Section 263 of the said Act.**

7. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the

Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. "

2) Narendra Goel Vs PCIT (ITAT Delhi) , ITA No. 470/DEL/2021, 17/05/2022

"9**In our considered view merely on the basis of suspicion, invoking of powers u/s 263 would not be justified.** The concluded assessment should be revised where there is **blatant error committed by the assessing officer, which culminated into the prejudice to the interest of Revenue.** But where the Assessing Officer made necessary inquiry and satisfied itself about the explanation offered to him, revising such an order is highly unjustified and contrary to the ratio laid down by the **Hon'ble Supreme Court in the case of M/s Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83.** Therefore, in the present case the action of the learned Pr. CIT is unjustified and the same is hereby set aside and the assessment is restored. "

52. It is further submitted that mere change of opinion or view would not enable the Principal CIT to exercise jurisdiction u/s 263 of the Act more so, when the AO had considered the details and the explanation offered by the assessee, as in the instant case. Change of opinion by reappraising the evidence is not within the parameters of revisional jurisdiction of the Commissioner under section 263 of the Act.

1) Commissioner Of Income Tax vs International Travel House Ltd [2010] 194 Taxman 324 (Delhi)

"16. In view of the aforesaid analysis, we are of the considered opinion that the tribunal had appositely apprised the law' and come to hold that a change of opinion or view would not enable the Commissioner to exercise jurisdiction under Section 263 of the Act more so, when the assessing officer had considered the details and the explanation offered by the assessee. "

17. ..The Commissioner has remained totally oblivious of the fact that the assessing officer had already examined this aspect but the **Commissioner had thought to direct a re-inquiry for merely a change of opinion which is impermissible under Section 263 of the Act. ”**

2) Hon'ble Punjab & Haryana High Court in the case of **CIT Vs Deepak Mittal 324 ITR 411** held that change of opinion by reappraising the evidence is not within the parameters of revisional jurisdiction of the Commissioner under section 263 of the Act.

53. Under section 263 of the Act. it is an obligation on the Ld. Principal CIT to conduct an independent inquiry before passing the revision order under section 263. But in the instant case Ld. Principal CIT had relied only on the comments of Ld. AO which were received against the show cause notice issued to assessee company under section 263 of the Act. Ld. Principal CIT had not even conducted any independent enquiry in the instant case before reaching the conclusion.

54. Further, in the following cases it has been held that where revisionary authority **i.e Ld. Principal CIT in the instant case opined that further inquiry was required, such inquiry should have been conducted by Ld. Principal CIT himself independently** to record finding that the assessment order passed by the Assessing Officer was erroneous and prejudicial to revenue. Reliance is placed on the following judgements:

1) **PCIT Vs. Delhi Airport Metro Express Private Limited, [2018] 99 taxmann.com 382 (Delhi)**

“10. For the purposes of exercising jurisdiction under section 263 of the Act, the conclusion that the order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue has to be preceded by some minimal inquiry. In fact, **if the Principal Commissioner of Income-tax is of the view that the Assessing Officer did not undertake any inquiry, it becomes incumbent**

on the Principal Commissioner of Income- tax to conduct such inquiry. ”

2) Director of Income-tax V. Jyoti Foundation, [2013] 38 taxmann.com 180 (Delhi)

“4. Revisionary power under Section 263 of the Act is conferred by the Act on the Commissioner/Director of Income-tax when an order passed by the lower authority is erroneous and prejudicial to the interest of the Revenue. Orders which are passed without inquiry or investigation are treated as erroneous and prejudicial to the interest of the Revenue, but orders which are passed after inquiry/investigation on the question/issue are not per se or normally treated as erroneous and prejudicial to the interest of the Revenue because the revisionary authority feels and opines that further inquiry/investigation was required or deeper or further scrutiny should be undertaken.

*5. In the present case, inquiries were certainly conducted by the Assessing Officer. It is not a case of no inquiry. The order under Section 263 itself records that the Director felt that the inquiries were not sufficient and further inquiries or details should have been called. However, in such cases, as observed in the case of DG Housing Projects Limited (supra), **the inquiry should have been conducted by the Commissioner or Director himself to record the finding that the assessment order was erroneous.** ”*

55. Thus, it is most humbly submitted that the impugned order of Ld.Pr.CIT u/s 263 does not stand valid in law as he has revised the order based on surmises and without any adverse findings. Ld.Pr. CIT has not been able to substantiate the order and has erred in law by canceling the assessment order passed by Ld.AO u/s 143(3) dated 5.4.2016.

Based on aforesaid facts and legal arguments, it is most humbly prayed that the order of Ld.Pr.CIT u/s 263 of the Act dated 29.8.2019 be held to be bad in law as it neither is erroneous nor prejudicial to the interest of the

revenue, which are essential conditions to invoke section 263 of the Act. Thus, it is prayed that the order u/s 263 of the Act may kindly be quashed and the order of Ld.AO u/s 143(3) dated 5.4.2016 may kindly be restored.”

6. Ld. Counsel for the assessee further relied upon the decision of the Co-ordinate Bench of the Tribunal rendered in the case of *Rits Jewellers (P). Ltd. Vs Pr.CIT, Faridabad, Haryana in ITA No.6226/Del/2019 dated 02.09.2022.*

7. On the other hand, Ld. Sr. DR opposed the submissions and supported the order passed u/s 263 of the Act. He submitted that the AO failed to make inquiry related to the issue for which the case was taken up for limited scrutiny through CASS. He submitted that therefore, non-consideration of the issue and making of requisite inquiry rendered the order as erroneous and pre-judicial to the Revenue. Therefore, he supported the order of Ld. Pr. CIT.

8. We have heard the rival contentions and perused the material available on records. By way of the present appeal, the assessee is assailing the order passed u/s 263 of the Act. The Ld. Pr. CIT issued a notice dated 19.02.2019 u/s 263 of the Act, calling upon the assessee to show cause as to why the assessment order dated 05.04.2016 should not be revised. The relevant contents of the notice dated 19.02.2019 are reproduced as under:-

“Please refer to the assessment order dated 05 04.2016 passed u/s 143(3) of the Income Tax Act, 1961 by the Income Tax Officer, Ward 2(2), Faridabad for the assessment year 2014-15 in your case,

2. On perusal of the case record and documents submitted by you during the assessment proceedings, it has been found that applicability of section 56(2)(viib) of the Income Tax Act on the issue of share premium received had not been taken into consideration while framing the

assessment by the assessing officer. It is noticed that in terms of Rule 11UA of Income tax Rules, 1962, Fair Market Value of shares of the company is less whereas share premium amount received from investors (share holders) is in excess of Fair Market Value.

As per the balance sheet, 60,875 shares issued is found to have fetched Rs. 1,31,98,750/- i.e. Share capital + Share premium which is equivalent to Rs.216.82/- per share. The Fair market value of 1,16,125 shares held by you at the beginning of the year comes to Rs. 1,38,77,190/- i.e. Share Capital + Reserve & Surplus which is equivalent Rs.119.50/- per share.

*Thus, it is clear that the excess amount received per share is Rs. 97.32/- (Rs.216.82 - Rs. 119.50). Under the provisions of section 56(2)(vii b) of the Act, the aggregate consideration received from the shares that exceeds the FMV of the shares is taxable under the head * Income from Other Sources.” The said excess value of shares comes out to Rs.59,24,355/ (60,875 X 97.32) which was not assessed during the assessment proceedings by the assessing officer. Therefore, the same needs to be added back, u/s 56(2)(vii b) of the Act under the Head “Income from Other Sources.”*

3. In view of the above, the order dated 05.04.2016 of the ITO, Ward-2(2), Faridabad is considered erroneous and also prejudicial to the interest of revenue. Before taking action under section 263 of income tax Act, you are hereby given an opportunity u/s 263 of being heard on 26.02.2019 at my office at 12.40 P.M. Faridabad. In case you do not wish to avail of the said opportunity of being heard in person or through an authorized representative, you may send a written submission so as to reach this office on or before 26.02,2019 which shall be considered before passing order u/s 263. In case of failure, the decision would be taken on merits.”

9. The assessee filed his reply dated 26.02.2019. The relevant contents of the reply filed by the assessee are reproduced as under:-

“With all due respect, we hereby acknowledge the receipt of your above notice and in this connection it is humbly submitted that we have been appointed as authorised representative to represent the case before your good -self. We are enclosing herewith power of attorney in our favour.

In connection with the above notice, we on behalf of the assessee are submitting as under:-

I. It may please be noted that for the purpose of valuation of unquoted equity shares of a private limited company u/s 56(2)(viib) read with Rule 11UA(2) of the Income Tax Act, 1961 has enumerated two methods as under:

[2] Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of such section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessor, namely:

(a) the fair market value of unquoted equity shares

<i>(A-L)</i>	<i>x (PV)</i>
<i>(PE)</i>	

Where,

A. book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset:

L. book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:

- (i) *the paid-up capital in respect of equity shares:*
- (ii) *the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company:*
- (iii) *reserves and surplus, by whatever name -called, even if the resulting figure is negative, other than those set apart to wards depreciation;*
- (iv) *any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*
- (v) *any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- (vi) *any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative, preference shares;*

PE - total amount of paid up equity share capital as shown in the balance sheet;

PV - the paid up value of such equity shares; or

(b) the fair market value of unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash flow Method

For the purposes of this rule and rule 11 UA,—

(b) "balance-sheet", in relation to any company, means,

(i) for the purposes of sub-rule (2) of rule 11 UA, the balance-sheet of such company (including the notes annexed thereto and forming part

of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (I of 1956) and where the balance-sheet on the valuation date is not drawn, up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;

From the perusal of the above clause, it may please be seen that the assessee company has opted for clause (a) for valuation of unquoted equity shares based on which the value came as under: -

the fair market value of unquoted equity shares

(A-L)	x (PV)
(PE)	

the fair market value of unquoted equity shares -81.43

(14683105-5226655)	10
1161250	

the fair market value, of unquoted equity shares (rounded off) - 80/-

Working Note:

A=	Fixed Assets	110513
	Cash and Cash Equivalents	237989
	Short Term Loans and Advances	14334603
	Total A	14683105
L=	Trade Payables	5225000
	Other Current Liabilities	1,655
	Total L	5226655
PE=		1161250
PV=		10

Or in simple terms,

Paid up capital as on 31.03.2013	1161250	
Add: Reserves and Surplus	8366530	
Total	9527780	A
No. of shares	116125	B

Value per share (A/B)	82.04
R/o in multiple of Rs.10/-	80/-

and accordingly for the sake of rounding off the new shares were issued during the captioned assessment year at Rs. 80/-. From the perusal of above calculation, it may please be seen that the assessee company has issued shares at a fair market value during the year under consideration, therefore, the provisions of Section 56(2)(viib) are not applicable to the assessee company and the share premium should not be added back to the income of the assessee company.

In the notice it is mentioned that 60,875 shares issued is found to have fetched Rs. 1,31,98,750/-i.e. Share Capital i Share premium which is equivalent to Rs. 216.82/- per share. It is true that the assessee company has issued 60,875 shares at Rs, 10/- each at a premium of Rs. 70/- per share aggregating to Rs.48,70,000/- and the same is evident from the calculation mentioned above, therefore, the assessee has never issued share at Rs. 216.82/ and did not collected Rs.1,31,98,750/ rather it has issued 60,875 shares and collected Rs. 48,70,000/- during the year under consideration. The same can be verified from the balance sheet attached herewith for your kind reference.

In view of the above submission, it is humbly submitted before your good-self that the assessee company has issued shares at a fair market value calculated by the assessee company as per the method enumerated under Rule 11UA of Income Tax Rules, 1962., therefore, the provisions of Section 56(2)(viib) are not applicable to the assessee company and the share premium should not be added back to the income of the assessee company. Thus the excess amount charged as mentioned in the notice i.e. Rs. 59,24,355/- should not be added back to the income of the assessee company as the same would amount to be an injustice to the assessee company, hence we request your good-self to please do the needful and drop the proceedings u/s 263 of the Income Tax Act, 1961.”

10. The assessee further made submissions dated 29.03.2019. For the sake of clarity, the relevant contents of the same are reproduced as under:-

“With all due respect and in continuation of our previous reply, we on behalf of the assessee are submitting as under;-

During the assessment proceedings, the assessee company has furnished that it has allotted 60,875 equity shares of Rs 10/- per share at a premium of Rs. 70/- per share and vide its reply has submitted confirmed ledger accounts from the investors, copy of their ITR for the year under consideration along with computation of income, their audited financial statements with annexures for the year under assessment, Bank Statement reflecting the transactions made during the year and Share Valuation Report as per rule 11 UA of the Income Tax Rules, which were duly considered and placed on records by the Ld. AO.

During the assessment proceedings, the Ld. AO has also called for information u/s 133(6) from investor companies and in response the investor companies have submitted requisite documents to establish its identity, creditworthiness and genuineness of the transactions, which has been considered by the Ld. AO and placed on records.

Further, it is humbly submitted that that the company is a company and as per our limited understanding of law, there is no definition of paper companies as per Income Tax Act or Companies Act. The assessee company/investor companies have fully discharged its onus by any standards cast upon it under the IT Act by establishing the identity, creditworthiness and genuineness of the transactions and the concerned investor have also complied with the inquiries and submitted requisite details and from the same it is categorically established that the assessee company has discharged its initial onus cast upon it and thereafter the onus shifted to the Ld. AO to disprove the documents furnished by the assessee company and investors and considered by him.

Further,

(a) the identity of the shareholder can be proved by before the AO or by way of documents, registered address, PAN, Income Tax Return, etc

(c) The genuineness of the transaction can be shown from the fact that the money has been received from the shareholder. If the money is received by cheque and is transmitted through banking or other indisputable channels, the genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be share application forms, share certificates, etc which were duly submitted in the course of assessment proceedings.

(d) The creditworthiness or financial strength of the creditor/ subscriber can be proved by producing the bank statement and balance sheet of the subscribers showing that it had sufficient balance or reserves and surplus to enable/ it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharge the onus cast upon him. The AO can discredit the documents produced by the assessee with cogent reasons and materials but not on the realm of suspicion;

(f) There is an additional burden on the Department to show that even if share applicants did not have the means to make investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. In the absence of such finding, addition cannot be made u/s 68 in the hands the assessee.

Reliance is placed on the following judgements/judicial announcements:-

Decision of Hon'ble High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603, in which it was held as under:

"Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the

Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that: the genuineness of the transactions had been duly established by the assessee,"

In Mod. Creations Pvt, Ltd. v. Income Tax Officer (2013) 354 ITR. 282 (Del), the position was clarified by the Court and it was held:

"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the credit worthiness of the sub-creditors."

Judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. G.P. international Ltd., (2010) 325 ITR 25 (P & H) in which it was held as under:

"AO having not doubted the identity of the persons from whom the assessee company has shown receipt of share application money, impugned transactions cannot be treated as non-genuine merely because some of the applicants did not respond to the notice issued by the AO under s, 133(6) and, therefore, addition was not sustainable."

Judgment of Hon'ble Delhi High Court in the case of CIT vs. Victor Electrodes Ltd., (2010) 329 ITR 271 in which it was held as under:

"When the assessee had filed copies of resolution passed by the board of directors of applicant companies, besides their bank statements and IT returns which were not found to be non- genuine, without: making further inquiry from the internal record of the Department or from the concerned banks, the addition could not be made on the ground that the directors or representatives of the applicant companies were not produced."

Judgment: of the Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services (P) Ltd., (2008) 307 ITR 334 (Del.) in which it was held as under :

'CIT(A) having accepted the existence of the share applicants and the Revenue having not shown that the applicants did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company, addition was rightly deleted by the Tribunal; no substantial question of law arises."

From the above discussions, it may be submitted that in the absence of proper opportunity of being heard, the addition u/s 68 of the Act would amount to injustice towards the assessee company.

To sum up Section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income.

In the present case, both the nature and source of the share capital and share premium received was fully explained by the assessee. Confirmed ledger accounts from the investors, copy of their UR for the year under consideration along with computation of income, their audited financial statements with annexures for the year under assessment, Bank Statement reflecting the transactions made during the year and Share Valuation Report as per rule 11UA of the Income Tax Rules were placed on AO's records and accordingly all the three conditions as required u/s 68 of the Act i.e. identity, creditworthiness and genuineness of the transactions were disclosed and placed in the form of documents before the Ld, AO.

With respect to Section 56(2)(viib) of the Act. it was submitted with our previous reply that the assessee company has issued shares at a fair market value calculated by the assessee company as per the method enumerated under Rule 11UA of Income Tax Rules, 1962, therefore, the provisions of Section 56(2)(viib) are not applicable to the assessee company and the share premium should not be added back to the income of the assessee company.

Further, reliance is also placed on the following judgments/judicial announcements

I. Judgment of Hon'ble Delhi High Court in the case of CIT &Ors, Vs. Five Vision Promoters Pvt. Ltd., &Ors. (2016) 380 ITR 289 (Del.) in which it was held as under:

"Provisions of s 68 can be invoked only where assessee offers no explanation at all or explanation offered is unsatisfactory; and addition thereunder can be made only on that condition."

II. Judgment of Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & Investment Ltd., (2016) 237 Taxman 109 (Del.) in which it was held as under ;

"In terms of section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of assessee to prove creditworthiness of source(s) of sub-creditors."

III. Decision of Hon'ble High Court in the case of CIT vs. Vrindavan Farms Pvt Ltd., etc. ITA.No.71 of 2.015 dated 12th August, 2.015 (Del.), in which it was held as under;

"The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It: was observed by the ITAT that: the AO had not undertaken any investigation of the veracity of the documents submitted by the

assessee. the departmental appeal was dismissed by the Hon'ble High Court.

IV. Share Capital/Premium cannot be regarded as undisclosed income. High Court deleted addition made for share premium u/s 68

ABCAUS Case Law Citation: ABCAUS 2478 (2018) 08 HC

Important Case Laws Cited/relied upon: Commissioner of Income Tax v. Electro Polychem Ltd. (2007) 294 ITR 661, Commissioner of Income Tax v. Steller Investment Ltd. (2001) 251 ITR 263

The instant appeal was filed by the assessee against the order of the Income Tax Appellate Tribunal (Tribunal /ITAT) in upholding the addition confirmed by the Commissioner of Income-tax (Appeals) u/s 68 of the Income Tax Act, 1961 (the Act).

The assessee assessee was a Private Limited Company which during the relevant assessment year had issued share capital at premium. The entire share premium and the paid up value was apparently by book adjustment.

The assessee company had allotted shares at premium to a person to an individual allottee to whom the loan creditor of the company had assigned the loan amount payable by the company. Consequently, in the books of accounts of the assessee assessee, the said amount was shown as due to the said allottee. The assessee, therefore, had allotted its shares to the allottee in settlement of the amount due to loan creditors.

The return filed by the assessee assessee was selected for scrutiny. The Assessing Officer treated share premium and the share capital as unexplained cash credits under Section 68 of the Act. The AO was of the view that the assignment agreement furnished by the assessee assessee was only a purported agreement without any substance and the transaction was a mere book adjustment.

The assessee assessee appealed to the Commissioner of Income Tax (Appeals) who upheld the addition of share premium and share capital as unexplained cash credit under Section 68 of the said Act and dismissed the appeal of the assessee assessee.

The-Appellate Tribunal held that by way of introducing cash credit in the name of share premium and share capital, the assessee assessee attempted to reduce the tax liability. The Tribunal further held that when the Assessing Officer found credit in the books of account and the assessee assessee could not offer any satisfactory explanation, then the entires found in the books have to be treated as income of the assessee assessee and, thus, dismissed the appeal by confirming the orders passed by the authorities below.

Aggrieved by the order of the Tribunal, the assessee filed the instant appeal raising the question whether the learned Tribunal erred in holding that value of shares allotted to individuals would amount to unexplained cash credit?

The assessee argued that when there was no cash involved in the transaction of allotment of shares, provisions of Section 68 of the said Act treating it as unexplained cash credit were not attracted. It was also contended that inasmuch as the source of credit in which shares were allotted was clearly explainable, the same cannot be treated as unexplained cash credit. Moreover, the identity of the share holders and the liability of the company to shareholders has been established and, therefore, the allotment of shares cannot be treated as unexplained cash credit.

The Tribunal observed that the Division Bench or the High Court had held that in case of cash credit of share application money, even if it were to be assumed that the subscribers to the increased share capital were not genuine, the amount of share capital would in no circumstances be regard as undisclosed income of the company.

Also, the Hon'ble Supreme Court held that even if the subscribers to the increased share capital of assessee-company were not genuine, the amount could not be regarded as undisclosed income of the company.

The Tribunal answered the question raised in favour of the assessee and against the Revenue.

- V. *It was held by the Hon'ble Apex Court in the case of Orissa Corpn. (P) Ltd. (supra) 159 ITR 78 and the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR. 360 / [2003] 127 Taxman 523 , that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68.*

Relevant observations at pages 369 and 370 of this report are reproduced hereunder:-

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by

the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by' treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

- VI. *When a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regards our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the COMMISSIONER OF INCOME TAX, KOLKATA-III Versus DATAWARE PRIVATE LIMITED ITA No. 263 of 2011 Date: 21st September, 2011 wherein the Court held as follows: "In our opinion, in such circumstance';, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the*

assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness" of transaction through account payee cheque has been established. We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principles which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

VII. *Decision of Hon'ble High Court in the case of CIT vs. (i) Dwarakadhish Investment P. Ltd., (ITA.No. 911 of 2010) and (ii) Dwarkadhish Capital P. Ltd., (ITA.No.913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under:*

"In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assesses yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02. on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of

share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified."

From the above submissions, it may please be seen that the assessee company has submitted all the necessary information with documentary evidences and have justified the share premium received during the year under consideration, therefore the addition on account of share premium received from investor companies should not be made u/s 68 of the Act. Further, it is submitted that the notice dated 26.03.2019 fixing the hearing on 29.03.2019 has been received by the assessee company on 28.03.2019 and the assessee company has no time to compile the requisite documents again to justify the share premium. Therefore, without providing ample opportunity of being heard, the addition would amount to be an injustice to the assessee company. Hence, we request your good-self to not to add the share premium received from investor companies u/s 68 of the Act and kindly drop the proceedings u/s 263 of the Income Tax Act, 1961.

Without prejudice to our above submission, in case your good-self is still not satisfied with this reply, then the assessee company may please be granted opportunity to furnish the relevant information as per the Income Tax Act and opportunity of rebuttal should be given to the assessee company to meet the natural justice before forming adverse view against: the assessee company."

11. However, the reply submitted by the assessee was found unacceptable and therefore, Ld. Pr. CIT was of the view that the order passed by the AO was erroneous and prejudicial to the interest of Revenue. For the sake of clarity, the relevant observations of Ld. Pr. CIT are reproduced as under:-

5. *“In view of the foregoing, it can safely be said that an order passed by the Assessing Officer becomes erroneous and prejudicial to the interest of the Revenue under section 263 in the following cases:-*

(i) The order sought to be revised contains error of reasoning of law or of fact on the face of it.

(ii) The order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law. In the same category fall orders passed without applying the principals of natural justice or without application of mind.

(iii) The order passed by the Assessing Officer is a stereotype order which simply accepts what the assessee has stated in his return or where he fails to make the requisite enquiries or examine the genuineness of the claim which is called for in the circumstances of the case.

6. *In this case the AO had completed the scrutiny assessment without making any requisite verification w.r.t issues raised in para 2 above. The assessment records established that there was no enquiry whatsoever and thus the assessment was a stereotype one without examining the genuineness of the claim of the assessee, thus rendering the assessment erroneous and also prejudicial to the interest of Revenue.*

Keeping in view the above various judicial pronouncements and in the absence of any verification made by the AO during the course of assessment proceedings, the assessment order u/s 143(3) r.w.s. 147 of the Act dated 19.04.2016 is held to be erroneous and also prejudicial to the interest of revenue and hence cancelled & to be framed afresh. The AO

is directed to make proper enquiries to verify the issues before completing the assessment.”

12. It is well settled law powers u/s 263 of the Act, can be exercised where two conditions are satisfied i.e. order sought to be revised is erroneous and so far it is prejudicial to the interest of Revenue. It is also well settled that absence of any of conditions renders the exercise of power u/s 263 of the Act, as illegal and unjustified. In this backdrop, action u/s 263 of the Act is required to be tested. For the sake of clarity, section 263 of the Act is reproduced herein below:-

Section 263

63. *“For the purposes of sections 60, 61 and 62 and of this section,—*

(a) a transfer shall be deemed to be revocable if—

(i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(ii) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets ;

(b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.”

13. In the case in hand in sum and substance, the contention of Ld. Counsel for the assessee is that order so revised by Ld. Pr. CIT is not erroneous and prejudicial of the interests of the Revenue. The Ld. Pr. CIT has revised the assessment primarily on the ground that the AO had completed the scrutiny assessment without making any requisite verification. He further observed that AO did not make any inquiry to examine the genuineness of claim of the assessee. However, Ld. Counsel for the assessee has pointed out that AO had

carried out requisite inquiry regarding genuineness of claim of the assessee regarding share application money. We find that the AO issued detailed questionnaire to the assessee and in response thereto, the assessee made submissions and also submitted the valuation arrived at as per Rule 11 UA of the Income Tax Rules, 1962. Ld. Pr. CIT has not pointed out that the valuation of shares as arrived at by the assessee, is not correct. In absence of such finding and coupled with the fact that the Ld. Pr. CIT did not revise the order on the basis which notice u/s 263 of the Act was issued. Moreover, there is no specific finding above the prejudice being caused to the Revenue. Therefore, in the absence of a specific finding by Ld. Pr. CIT regarding both the conditions i.e. order is erroneous and prejudicial to the interest of Revenue, the impugned order cannot be sustained as it fails the test of law. Therefore, respectfully following the binding precedents, we hereby set aside the impugned order and restore the original assessment order. Thus, grounds raised by the assessee are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 15th November, 2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI